

AMERICAN LEGAL EDUCATION: PAST, PRESENT AND FUTURE

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HISTORY

The first American law schools were established over 200 years ago, although for much of the 19th Century most lawyers were self-educated or studied under the tutelage of practicing lawyers. Not until well into the 20th Century were most American lawyers educated in formal law schools.

Probably the most significant development in American legal education was the institution of the case method of instruction at Harvard Law School in the 1870s by Dean Christopher Columbus Langdell. The case method was based on Langdell's view that the academic discipline of law should be understood as a science. For Langdell, the law library was the legal scientists laboratory and the compilations of statutes and case decisions were the raw data to be studied. Pursuant to the case method, students would be presented with the raw data of the cases and asked to discover the controlling principles which could then be used to advise clients about how the law would be applied in the future.

This theory reflected the common law system in which courts resolve disputes based on the precedent of earlier cases, and lawyers advised clients based on the assumption that judges would

do precisely that. Statutory law was relatively insignificant during this early period and was given very little attention in law schools. Administrative law was virtually non-existent.

Beginning with the New Deal of President Franklin Roosevelt, statutory and administrative law took on more importance in the practice of law, but legal education continued to be focused almost exclusively on the case method. Indeed, the case method continues to dominate American legal education, although all American law students are now expected to take courses in statutory law - like taxation and commercial law - and at least a basic course in administrative law focusing on the multitude of rules issued by federal and state government agencies.

Parallel with the reliance on the case method has been a reliance on the Socratic method of instruction. The core idea of the Socratic method is that the professor poses questions that the students answer orally during class. An accomplished Socratic teacher will have a series of questions in mind that are designed to lead the students to an understanding of the basic principles in the cases being studied. Often the professor will pose questions about the facts, reasoning and handling of a particular case the students have read, and will then pose hypothetical cases in which the facts are modified and the students are asked to determine how the rule of the first case should or should not apply to the hypothetical case.

Generally the professor will either call on a student without any forewarning or will take volunteers. My experience has been that relying on volunteers means that many students will not

participate in the class discussion. Because part of the objective of the Socratic method is to train students to think and speak spontaneously, it is generally thought to be important that all students participate in class discussions.

CURRENT STATE

Most American law professors continue to rely on the case method of instruction to a significant degree. However, other types of materials have gradually become part of what students study in many of their courses. This reflects the evolution of American law over the past century to include many more statutes and a vast array of regulatory rules. Some subjects continue to be heavily dependent on the common law - e.g. torts, criminal law, property, contracts - but other subjects like environmental law, commercial law, taxation, health law and many others derive largely from statutes and regulations.

As a consequence many American law professors have begun to use the problem method in addition to the case method. The problem method, first used widely in American business schools, relies on the study of real or hypothetical fact situations to understand how the law applies. Often the professor may spend several class sessions working through the complexities of a particular problem with the students expected to figure out what the law is and how it applies.

In addition to studying cases, statutes and regulations, American law students will often be asked to read scholarly articles to assist them in gaining an understanding of the law.

These articles and the discussions in their classes will sometimes focus on questions of policy - that is what should the law be or what impact is the law having on individuals and the society - as well as on a determination of what the law is.

In virtually every American law school, the first year curriculum is required and fairly similar. It normally includes contracts, torts, property, civil procedure, criminal law and legal writing and research. Many schools also include constitutional law and/or administrative law as a required first year class. After the first year most classes are electives, although students are generally required to take a legal ethics and professionalism class.

The subjects studied in American law schools have expanded dramatically over the last few decades. As American law practice has become more and more specialized reflecting the ever-increasing complexity of the law, specialized courses in a wide array of topics have been developed. Examples of such classes might include: health law, aviation law, ocean law, wildlife law, animal law, water law, land use law, sports law, entertainment law, patent law, admiralty law, international business transactions, copyright law, cyberlaw, and so forth.

Most law students take a set of core upper division courses that they expect to face on the bar examination. In addition to the first year required courses these will generally include corporations or business associations, commercial law, federal taxation, evidence, wills and trusts and other subjects depending upon the state in which they plan to take the bar examination.

Over the last three decades, American law schools have begun

to offer certificates of specialization in several fields including environmental law, intellectual property law, criminal law, international law, business law, etc. However, students are generally encouraged to get a good broad and general legal education so that they are prepared to pursue most kinds of work they might encounter after graduation. The one field where advanced training beyond the JD degree is the norm is taxation.

Every American law student studies legal research and writing during their first year of law school. The objective is to teach the students how to conduct legal research, which increasingly is done through electronic data bases - rather than books, and to introduce them to the forms and content of legal writing. Most law schools also require students to complete one or two major writing projects while in law school. I would say that most American legal educators agree that writing is the most important skill for new lawyers to master.

Clinical legal education has also expanded significantly over the last four decades. In law clinics, students have the opportunity to work on real cases with faculty members who are themselves practicing lawyers. Usually the cases they work on are fairly simple, but generally the student is able to handle the case from start to finish including making appearances in court or before administrative bodies. Very recently schools have also developed clinics in which students work on what we would call transactional practice skills. These students assist clients with the negotiation of private agreements and the drafting of basic legal documents - the office practice that is in fact what most American

lawyers do most of the time.

Although most American lawyers do not appear frequently in court, all of our students are expected to participate in a moot court of some type. Usually this is an appellate proceeding in which the student is required to write a legal brief and then argue before a panel of judges. Students also have the opportunity to study trial practice techniques and to practice those techniques in a mock trial proceeding. There are numerous competitions that allow law students from one school to compete against students from other schools in these moot courts and mock trials. Generally the judges in these competitions are real judges from the state and federal courts.

The standard law school program takes three years or six semesters of study. This means that full time law students will devote most of their time to their studies between late August and May. During the summers they will generally find legal work of some type which is both useful to their education and gives them an opportunity to experience different types of legal work. Most full time law students will also work a few hours a week, often with a law firm, judge or government agency. My law school also has a part-time program that requires a student to take a somewhat lighter course load each semester and finish law school in four years. Both full time and part-time students can graduate more quickly if they attend summer school.

FACULTY

American law faculty members are all lawyers, many with

advanced degrees in other fields of study. Most have attended the top law schools in the United States, and many have studied and taught in other countries.

The normal career path for a law faculty member in the United States looks something like this. They will have graduated from law school and often gone on to be a clerk for a judge in the federal or state court systems. After a year or two of clerking for a judge, they will enter into law practice either with a law firm or with a government agency. After three or four years of practice, they will seek a law teaching job. Many will have written law review articles before joining a faculty.

Unless they are hired after teaching at another law school, faculty will start as assistant professors. After three or four years they will be promoted to associate professor if they have been successful teachers and productive scholars. They will also be expected to contribute to the community and profession. Two or three years after promotion to associate professor they will be considered for tenure. Once tenured they cannot be terminated except for serious cause or due to financial exigency of the institution. Two or three years after being tenured, they will be promoted to full professor, again assuming they have met the requirements.

At my law school successful teaching is very important. We use student evaluations to assess teaching quality and we also visit the classes of those up for promotion or tenure. We also ask faculty members from other law schools to review the scholarship of our faculty prior to promotion or tenure.

Faculty members generally teach two classes per semester, although occasionally they may teach only one if they are engaged in a serious research project. They are eligible for a sabbatical leave once every seven years. Often these leaves will involve foreign study and may present opportunities for our faculty to visit here in Japan.

RELATION TO UNIVERSITY

Most, but not all, American law schools are a part of a university, or larger institution. This association often creates opportunities of law faculty and students to work with people in other disciplines. The most common collaborations have been with economics and other social sciences, but increasingly there is collaborative research and sometimes jointly taught classes in the various physical and biological sciences.

It is also common for law schools and business schools to cooperate and sometimes to offer joint degree programs. At my school our faculty has taken a particular interest in introducing our business law students to basic concepts of business so that they have a better understanding of the needs and interests of their business clients when they enter the practice of law.

REGULATION

American legal education is regulated by the American Bar Association (the national professional association of American lawyers). The authority of the ABA to regulate law schools derives from the fact that lawyers in each state must be licensed by the

Supreme Court of that state. Every state, except California, requires that lawyers must graduate from an ABA accredited law school to be eligible for admission to the practice of law. Thus, the vast majority of law schools seek accreditation by the ABA so that their graduates may practice anywhere in the United States.

The ABA collects information annually from each law school and conducts an accreditation review including a site visit once every seven years. To qualify for ABA accreditation a law school must meet minimum standards for faculty qualifications and support, curriculum, facilities, library resources, students services and preparation of graduates for reasonable success on the bar examination.

Most American law schools are also members of the Association of American Law Schools. Members must meet minimum standards largely focused on academic achievement by faculty and students.

FUNDING - PUBLIC AND PRIVATE

American law schools are roughly evenly divided between public and private. Public law schools are part of state supported university systems. Historically they derived most of their financial support from the state legislature. Over the last two decades most states have cut back on their financial support of higher education with the result that student tuition and fees at public law schools have risen dramatically. As some public law schools, state support provides less than 20% of the total cost of operations.

Private law schools are generally part of a private university,

although there are several that are free standing with their own governing board. My law school is part of a larger institution that also includes an undergraduate college and a graduate school of education and counseling. Private law schools derive most of their income from tuition. As a result tuition at private law schools tends to be much higher than at public law schools, often two or three times as much. At my law school, annual tuition is about \$25,000.

Historically, private law schools have also depended on donated funds from alumni and others. Due to the reduction in state support, public law schools have also become increasingly dependent on private fund raising. At my law school, approximately 20% of our graduates contribute each year to the law school's annual fund raising campaign.

Very few law students are able to afford the annual tuition without borrowing money. Most are able to obtain federally subsidized loans which are generally paid off during the ten years after graduation. The average law school debt for our graduates is about \$70,000. This is not difficult to pay for graduates who take jobs in private law firms or with business, but for those who have jobs with public interest organizations or with legal aid offices it can be a serious problem.

In my opinion, American legal education has benefited from the mix of private and public schools. It has created a competitive market for legal education with a wide variety of schools to meet almost any student's needs. Detailed information about every law school in the United States is reported by the American Bar

Association, so it is possible for prospective law students and legal employers to know a lot about any individual school.

ADMISSIONS

At most law schools, the faculty plays an important role in the admissions process. At my school, we have an admissions staff that compiles and initially review applications. A faculty committee then reviews those who might qualify for admission to select the best. Because we get applications from many more people than we can admit, we must deny admission to many qualified applicants. For this year's entering class of 230, we had over 2500 applications. However, because most applicants will apply to several law schools, we offered admission to about 900 in order to get a class of 230. About one quarter of our students come from our home state of Oregon, while the remainder come from almost every other state in the country as well as a few from foreign countries.

Law school applicants are required to take the Law School Admission Test (LSAT) before making application. Their score on this test is submitted to each law school they wish to apply to along with their grades and transcript from their undergraduate university and any graduate degrees they may have earned. Applicants are also required to write a statement about why they are interested in attending law school and submit letters of reference from people who can attest to their likely success in law school. Their personal statements are also useful as an indicator of their ability to write clearly and concisely.

As you probably know, all American law students must first

complete a bachelors degree. Increasingly, law school applicants will also have worked in some field prior to attending law school. As a result, the majority of law students are in their mid and even late twenties in terms of age.

STUDENT LIFE

Because most law schools are part of a larger university, there are generally many opportunities for students to be involved in extra curricular activities. Even without a larger university, most law schools have numerous student groups focused on a wide variety of interests, both legal and nonlegal. The students at my law school are very active in the community and actively involved in the governance of the law school. We have two students on every faculty committee, except promotion and tenure, and have voting student representatives at our faculty meetings. Our view is that we can better provide for the needs and interests of our students if they are active participants in the school.

BAR EXAM

Every American jurisdiction (the fifty states) requires that lawyers pass a bar examination before being admitted to practice. For many years this meant that lawyers would have to take a bar examination in each state where they sought to practice. This is still the case to some extent, although more and more states are entering into reciprocal agreements to accept the bar examination results of the other state. Each state designs and administers its own bar examination, so they vary significantly from state to

state. Historically the states have tested on laws peculiar to their state, but as American law has become more uniform this is less the case. Some states test on relatively few subjects, others on as many as 25 or more. The pass rate also varies significantly from state to state.

There is a multi state bar examination that states can choose to use if they like. Most states do use the multi state exam which is a six hour multiple choice exam covering property, contracts, torts, evidence, constitutional law and criminal law. In addition, most states will have a second day of questions to which essay answers are required. These questions can be on any subject within the list of potential subjects specified by the state. Students will not be tested on all subjects, but they must prepare for all subjects because they do not know which ones will be covered on the examination. The essay questions are generally written and graded by a board of bar examiners who are usually young lawyers who volunteer for the task. It can take anywhere from two to six months for the exams to be graded. The pass rate varies from as low as 60% in some states to as high as 95% in others. Of course the pass rate also varies from year to year in any given state.

Students prepare for the bar examination in two basic ways. Their legal education is obviously important, but American law schools do not teach to the exam. (By this, I mean we do not design our law school classes or curriculum around the specifics of the bar examination, in part because our students will take the examination in many different states and in part because we

believe we have an important academic mission beyond the preparation of students for the bar examination.) However, most faculty members assure that their courses give full coverage to the subject and as a law school we offer every subject that might be on a bar examination. Students also learn the technique of taking essay exams since most law school examinations are of the essay type.

The second way in which students prepare for the bar examination is by taking a bar review course after graduation. This is a six week intensive course that reviews in detail every subject on the bar examination. The course is not offered by any law schools, although it is often taught on law school campuses for the convenience of the students. The courses are offered by private companies that specialize in the study of past bar examinations and are thus well able to educate students about what they can expect on the bar examination.

Students who do not pass the bar exam are eligible to take it again. Most will pass the exam on the second or third try, although there is a small percentage that never pass and are therefore precluded from practicing law.

PLACEMENT

All American law schools actively assist their students in finding legal employment after graduation. This is done by inviting legal employers to campus for interviews with students and by assisting students in the preparation of their application materials and in identifying employment opportunities.

Law students enter into many different kinds of work. Some go to work for large law firms where they will tend to specialize in a narrow area of practice. Others join small firms that may have specialized practices or may offer general legal services. Still others will find jobs with government agencies, public interest groups, in house legal counsel positions with business or legal aid, which provides legal services to the poor. A few law graduates will not practice law, but will pursue business or other types of work.

CHALLENGES

The biggest challenges for American legal education looking to the future is to keep pace with the legal needs of a rapidly globalizing economy. Ours, like every other, is an insular legal system that has struggled to adapt to a world in which national boundaries are less and less important from an economic perspective. Indeed, the Internet has led to a world in which national governments are often incapable of exercising control. Our challenge is to train our new lawyers to function in this world and to understand the peoples and cultures they will deal with in the future. We will also need to design institutions that are responsive to the needs and demands of a global economy and society. Although we have just begun this collaboration between our two schools, I think we are taking an important and necessary step in facing this challenge.

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* 本稿は平成16年11月17日に白鷗大学法科大学院で行われた講演記録をまとめたものである。